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September 10, 2010

VIA E-MAIL

Karen L. Hawkins
Director, Office of Professional Responsibility
Internal Revenue Service
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SE:OPR Room 7238IR
Washington, DC 20224

Dear Ms. Hawkins:

It is my understanding from our telephone conversation on September 8, 2010 that you had asked Christine Brunswick, of the American Bar Association (“ABA”) Section of Taxation for input in developing the Internal Revenue Service’s Frequently Asked Questions (“FAQs”) to provide guidance as to proposed PTIN regulations. It is my understanding that Christine Brunswick contacted Paul E. Van Horn, the Chair of the Estate and Gift Taxes Committee of the ABA Section of Taxation, and I was asked by him to contact you and provide such assistance.

In addition, I am Secretary of the American College of Trust and Estate Counsel (“ACTEC”), a professional association of more than 2600 attorneys skilled and experienced in estate planning and administration and dedicated to the improvement of the laws in these areas. Fellows of ACTEC are elected by their peers on the basis of professional reputation and ability in the field of trusts and estates and on the basis of having made substantial contributions to these fields through lecturing, writing, teaching, and bar activities. Fellows of ACTEC have extensive experience in rendering advice to taxpayers on matters relating to estate, gift and fiduciary income tax compliance. I have obtained input for this letter from the leaders of ACTEC, and am writing to you on behalf of ACTEC in conjunction with ACTEC’s practice of providing technical comments about the law and its effective administration; ACTEC does not take positions on matters of policy or political objectives.

Fellows of ACTEC practice in firms of all sizes, and therefore represent of a large number of attorneys who work in diverse practices with paralegals on a daily basis in the administration of a very large number of estates and trusts. In conjunction with this practice, we prepare a large number of Estate Tax Returns (Form 706), Gift Tax Returns (Form 709) and Fiduciary Income Tax Returns (Form 1041). In addition, we prepare Exempt Organization Income Tax Returns (Form 990 series), Applications for Tax Exempt Status (Form 1023), and the final Income Tax Returns (Form 1040) for decedents. Much of this work is performed by our paralegals, and occasionally by young attorneys, under the supervision of our Fellows. For example, in my firm it is our policy that all returns are signed by a partner in our practice group, who has a PTIN.

Your recent notice and proposed regulations concerning expanding those required to obtain PTINs to nonsigning tax return preparers or others whose tasks seemingly encompass the tasks routinely performed by our paralegals under attorney supervision, and to require additional continuing education and testing to qualify for the issuance of PTINs, has created much concern about whether we will be able to continue to perform the work we do for our clients on the economical basis that results from the use of our paralegals.

After speaking with you, it is my understanding that the Internal Revenue Service is planning to issue a series of FAQs in the very near future and that you would value input from those regularly involved with the administration of estates and trusts, such as the Fellows of ACTEC, as to the various practice scenarios we believe should be addressed in your soon to be issued FAQs. The following is our list of such routine practice scenarios dealing with the returns that we routinely prepare as set out above.

1. An attorney with a PTIN meets with the client and gathers initial data concerning the assets owned by the decedent, conveys that information to a paralegal who then organizes the data and places it on Form 706 to be filed for the decedent using a software program such as GEMS. The draft return is reviewed and signed by the supervising attorney as preparer.
 - Will the paralegal need to obtain a PTIN in order to perform this task?
2. In addition to the tasks performed by the paralegal in #1 above, the paralegal also gathers additional information as needed to complete the return, from the client and from other outside sources, such as a brokerage house, a bank, an appraiser, all at the direction of the supervising attorney.
 - Will the paralegal need to obtain a PTIN in order to perform these information gathering tasks?
3. In addition to the tasks performed by the paralegal in #1 above, the paralegal uses the Estate Val system to obtain values for marketable securities reflected on brokerage statements obtained from the client or the brokerage house.
 - Will the paralegal need to obtain a PTIN in order to perform this task?
4. In addition to the tasks performed by the paralegal in #1 above, the paralegal reconciles all bank accounts, which includes a review of all uncleared checks to determine which can be excluded from the gross estate, all under the supervision of the attorney.
 - Will the paralegal need to obtain a PTIN in order to perform this task?
5. In addition to the tasks performed by the paralegal in #1 above, in putting together the initial draft of the Estate Tax Return, the paralegal reviews all reportable trusts and puts together the preliminary description of the trusts for the return, indicating which are

includible and which are not as determined by the supervising attorney, which descriptions are then reviewed and revised by the supervising attorney.

- Will the paralegal need to obtain a PTIN in order to perform this task?
6. In addition to the tasks performed by the paralegal in #1 above, at the direction of the attorney with the PTIN, the paralegal puts together the interrelated computations for a marital deduction, the allocation of GST exemption and the distribution of the estate to be shown on page two of the Estate Tax Return. The supervising attorney reviews these computations in completing the preparation of the return.
 - Will the paralegal need to obtain a PTIN in order to perform this task?
 7. In addition to the tasks performed by the paralegal in #1 above, in putting together the final draft of the Estate Tax Return to be filed, the paralegal organizes and labels and identifies on the return all of the supplemental documents to be filed with the return, under the supervision of the attorney.
 - Will the paralegal need to obtain a PTIN in order to perform this task?
 8. Does it make any difference in determining whether the paralegal will need to obtain a PTIN if software is not used to prepare the return and the initial draft, all revisions, and the final return are prepared by hand by the paralegal under the supervision of the attorney?
 9. A paralegal, under the supervision of an attorney with a PTIN, prepares a gift tax return (Form 709) for the client. Information concerning the reportable gifts is obtained by the attorney and given to the paralegal to prepare the return using software such as GEMS. The return is then reviewed and signed by the supervising attorney as preparer.
 - Will the paralegal need to obtain a PTIN in order to perform this task?
 10. Same as #9 above but the paralegal gathers the information for the gift tax return that reports gifts identical in nature to the gifts on a prior years return.
 - Will the paralegal need to obtain a PTIN in order to perform this task?
 11. Often some of these tasks performed by the paralegal as set out in #1 through #10 above are instead prepared by a young attorney who does not have a PTIN under the supervision of an attorney with a PTIN.

- Will the attorney have to obtain a PTIN prior to undertaking any of these tasks?
12. Often these tasks as well as the entire Estate Tax Return are prepared in whole or in part by employees of the bank or trust company involved in the estate or trust administration. The bank or trust company is an executor or trustee and will be signing the return as such.
- Will the employee completing these tasks in preparation of the return need a PTIN?
13. Same as #12 above, but the bank or trust company is not the executor or trustee.
- Will the employee completing these tasks in preparation of the return need a PTIN?
14. The bank or trust company or the CPA preparing the Estate Tax Return sends a draft of the return for review and comment to the attorney with the PTIN who represents the executor. The attorney then requests the paralegal to perform a preliminary review of the return and prepare comments. The paralegal reviews the return and provides comments to the supervising attorney, who then provides appropriate comments as determined by the attorney to the return preparer.
- Will the paralegal need to obtain a PTIN in order to perform this task?
15. The attorney with a PTIN obtains from the client all pertinent 1099s and account statements required for the preparation of the Fiduciary Income Tax Return for the Estate or Trust, and provides that information to the paralegal who compares the 1099s to the account statements and reconciles all income to be reported on the return. The paralegal then puts the information on the return through the use of a software program (such as Zane or ProSeries). The supervising attorney then reviews and signs the return as preparer.
- Will the paralegal need to obtain a PTIN in order to perform these tasks?
16. Same as #15 above, but the paralegal meets with the client to obtain all the necessary information to complete the return.
- Will the paralegal need to obtain a PTIN in order to perform this task?
17. Same as #15 above, but the paralegal determines the share of income reported on 1099s issued to the decedent that was received prior to death and is thus reportable on the decedent's final 1040 and the share of such income that was received post death and thus is reportable on the estate's Form 1041.
- Will the paralegal need to obtain a PTIN in order to perform this task?

18. Same as #15 above, but the paralegal meets with the client to go over the return to have it signed by the client after the supervising attorney has reviewed and signed the return as preparer.
 - Will the paralegal need to obtain a PTIN in order to perform this task?
19. Same as #15, #16, #17 and #18 above, but the paralegal is assisting in the preparation of the decedent's final Income Tax Return, Form 1040.
 - Will the paralegal need to obtain a PTIN in order to perform these tasks?
20. The attorney with the PTIN obtains all information for the preparation of a Form 1023 and then follows up with the exempt organization in obtaining all of the information for the preparation of the Form 990 for the organization. The paralegal under the supervision of the attorney prepares the initial draft of each such return through the use of a software program. The supervising attorney then reviews and signs the return as preparer.
 - Will the paralegal need to obtain a PTIN in order to continue to perform this task?
21. If the paralegal is required to obtain a PTIN in any of the scenarios set out above, does the paralegal need continuing education and testing in the preparation of 1040s as has been proposed in order to obtain this PTIN for purposes of preparing Estate Tax Returns, Gift Tax Returns, Fiduciary Income Tax Returns, Exempt Organization Income Tax Returns, and Applications for Exempt Status?
22. If the paralegal is trained and supervised by the attorneys with PTINs in the correct preparation of an Estate Tax Return, Gift Tax Return, Fiduciary Income Tax Return and Individual Income Tax Return, in fact, any tax return, and the return is signed by the supervising attorney as preparer, can any continuing education and testing requirement be waived? If so, how would this waiver be obtained?

While these are not an exhaustive set of practice scenarios, it is our hope that these will provide an adequate flavor for your purposes as to how our paralegals work within our practice area. In addition, it is our hope that these practice scenarios display that paralegals who work in the trust and estate area are closely supervised and extensively trained by attorneys who are registered preparers and who are subject to Circular 230 requirements and their own set of ethics rules and continuing education requirements, and that in all events, it is the attorney with the PTIN who signs the return as preparer. Under these limited and well defined circumstances it would seem that the goal of providing additional oversight of the return preparation process would be adequately met at the attorney level without requiring paralegals to obtain a PTIN when supervised by attorneys who have their own PTINs.

Karen L. Hawkins
September 13, 2010
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This letter and these practice scenarios have been prepared with the invaluable assistance of Paul E. Van Horn and other members of the Estate and Gift Taxes Committee of the ABA Section of Taxation, as well as with substantial input from the leadership of ACTEC. Thank you very much for your consideration in addressing these practice scenarios in your soon to be published FAQ. You should feel free to contact me if you have any questions with respect to any of these scenarios.

Very truly yours,

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